

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2225.05
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: February 24, 2005
DATE OF REPORT: April 12, 2005
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: June 7, 2005

COMPLAINT ISSUES:

Whether the Western Wayne Schools and the East Central Special Services District violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically with regard to the utilization of a time-out room.

During the course of this investigation, the following issue was discovered:

511 IAC 7-18-2(a) by failing to provide the student with a free appropriate public education (FAPE), specifically by failing to employ school attendance policies to ensure school attendance by a student with a disability.

On March 28, 2005, the Associate Superintendent granted an extension of time until April 14, 2005, due to the need to obtain additional information while the School was on its Spring break schedule.

FINDINGS OF FACT:

1. The Student attends kindergarten at the local elementary school (the School) and has been identified as having an emotional disability (ED) an other health impairment (OHI), and determined eligible for special education and related services.
2. The Student's case conference committee (CCC) convened on October 14, 2004, at the request of the Complainant. The Complainant expressed concern with regard to the use of a time-out room. The Complainant requested that the School no longer use the time-out room primarily because the Student was hurting himself by throwing his body against the unpadded walls of the time-out room. The CCC altered the Student's Behavior Management Plan to state, "Time-out room will be padded and [The Student] may use it [time-out room] when upset." It also states that, "Therapeutic holds may be used by persons trained through CPI [(certified instructors of nonviolent crisis intervention)]." The CCC also agreed to change the Student's placement to a more restrictive environment, specifically only participating in the general education setting for recess, lunch, and "specials" (art, music, physical education) while approximately 78% of the Student's time is in the self-contained ED classroom. The IEP states that the Student may earn more time in the general education setting with good behavior. The Complainant indicated agreement with this IEP.
3. After the CCC meeting held on October 14, 2004, the Student was placed directly in the time-out room eight times between October 26 and December 21, 2004, usually for five minutes, but some times longer. Each time the Student was directly placed in the time-out room the parent was called. In

addition, the Student was either escorted or voluntarily placed into the time-out room for five minutes or less 20 times between October 21, 2004, to January 28, 2005. The Student's ED classroom contains a "time-out" chair (different from time-out room) and an isolation chair (also different from time-out room). According to the Student's Behavior Management Plan, when the Student misbehaves, depending on the situation, the Student is usually sent to the time-out chair for five minutes and is expected to calm down. If the behavior continues (after three warnings), the Student is moved to the isolation chair where expectations for demonstrating proper behavior are higher in addition to calming down. The Student may also go directly to the isolation chair for physical or verbal aggression or for an outright refusal to sit in the time-out chair. Often the Student does not sit in the chair(s) and either hides under a table or runs into the time-out room. At no time was the Student unsupervised or left unattended by either the ED teacher or the teacher aide. The door of the time-out room can be readily opened from the inside and does not have a locking device (pursuant to the 2003 Indiana Fire Code, Sec. 1003.3.1.8). It was always left open when the Student voluntarily placed himself in the time-out room.

4. The Student's CCC convened on January 31, 2005. Again, the Complainant requested that the time-out room not be used at all. The CCC agreed to change the Student's placement to 98% participation in the ED classroom. The Complainant indicated agreement with the IEP. Due to the Student's self-abusive behavior while in the time-out room, the Behavior Management Plan was changed to state, "Time-out room used if [the Student] chooses as a quiet place. If [the Student] is physically out of control, he may be restrained by individuals trained in CPI." The School acknowledges that by the time this CCC convened, the time-out room was not padded.
5. The Student's CCC convened on February 8, 2005. The Complainant expressed concern about the Student's placement full-time in the ED classroom. The CCC began to discuss safety concerns based on the intensity and duration of the Student's behavior with regard to other students in the class and the school personnel who work with the Student. However, the CCC could not be completed and was scheduled to reconvene.
6. The School acknowledges that the time-out room was not padded until March 2005. An invoice dated March 8, 2005, indicates that a contractor was hired to install the padding for the time-out room. Documentation also shows that the padding was ordered on November 16, 2004, and shipped February 18, 2005.
7. The Student has not attended school since February 8, 2005, and has attended school only sporadically since November 1, 2004. For much of this time, the Student has been unilaterally checked in and out of residential treatment programs at various regional residential facilities. The Complainant has not withdrawn the Student from school. The Director of Special Education has contacted the local child protective services (CPS). However, the School cannot document whether and to what extent it reported anything to CPS or sent written correspondence to the Complainant regarding the Student's chronic absenteeism.

CONCLUSIONS:

1. Findings of Fact #2 through #6 indicate that the School did not fail to implement the Student's IEP as written with regard to the utilization of the time-out room. Although the Complainant made requests to the School to not use the time-out room, the Complainant's signature on each Case Conference Report indicates agreement with the IEP developed by the CCC. The Student's Behavior Management Plan allows for the use of the time-out room only as a last resort and for limited amounts of time. However, the School did fail to implement the related agreement to pad the walls of the time-out room. That agreement was in the IEP dated October 14, 2004. Finding of Fact #6 indicates that the School did not

install the padding until March of 2005. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the time-out room walls not being padded within a reasonable amount of time.

Finding of Fact #5 indicates that the Complainant has concerns about the Student's placement. This issue is beyond the scope and jurisdiction of a complaint investigation (see discussion below).

2. Finding of Fact #7 indicates that the School did not attempt to employ its attendance policies to ensure school attendance by the Student. The Complainant has not withdrawn the Student from school. The School did not take the necessary steps to satisfy the state's compulsory school attendance act, or report the Student's inordinate number of absences to local child protective services. Therefore, a violation of 511 IAC 7-18-2(a) is found.

DISCUSSION:

A complaint investigation addresses allegations a public agency has failed to comply with the requirements of federal and state law with regard to special education. Such allegations are procedural in nature. A complaint investigation cannot resolve disagreements between the parent and the public agency over what constitutes a free appropriate public education (FAPE) for the student. Such issues must be resolved through the due process procedures at 511 IAC 7-30-1 (mediation) or 511 IAC 7-30-3 (due process hearing).

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

Western Wayne Schools and the East Central Indiana Special Services District shall:

Convene the Student's case conference committee to determine the Student's placement, sufficient level of services, and the provision of a free appropriate public education. A copy of the Case Conference Report and IEP shall be submitted to the Division no later than May 20, 2005.

Submit an assurance statement signed by the Superintendent confirming that the time-out room at issue in this complaint is in compliance with the 2003 Indiana Fire Code, Section 1003.3.1.8. A copy of the assurance statement shall be sent to the Division no later than May 20, 2005.

Send a written memorandum from the Superintendent to all school principals regarding the state's Kindergarten Entrance Law and other compulsory school attendance requirements. In addition, the Superintendent shall provide copies of the Indiana Department of Education's Attendance Manual for review. A copy of the memorandum and an assurance statement from the Superintendent that all principals have received the manual for review shall be submitted to the Division no later than May 20, 2005.